

§ 550.100

§ 550.100 What factors may the OTS consider in its review of my application?

The OTS may consider the following factors when reviewing your application:

- (a) Your financial condition.
- (b) Your capital and whether that capital is sufficient under the circumstances.
- (c) Your overall performance.
- (d) The fiduciary powers you propose to exercise.
- (e) Your proposed supervision of those powers.
- (f) The availability of legal counsel.
- (g) The needs of the community to be served.
- (h) Any other facts or circumstances that the OTS considers proper.

§ 550.110 Who will act on my application?

The Director of OTS may act on any application. The Regional Director may act on an application if it does not raise any significant issues of law or policy on which the OTS has not taken a formal position.

§ 550.120 What action will the OTS take on my application?

The OTS may approve or deny your application. If your application is approved, the OTS may impose conditions to ensure that the requirements of this part are met.

§ 550.125 How do I file the notice under § 550.70(c)?

(a) If you are required to file a notice under § 550.70(c), within ten days after you commence the fiduciary activities in a new State, you must file a written notice that identifies each new State in which you conduct or will conduct fiduciary activities, describe the fiduciary activities that you conduct or will conduct in each new State, and provide sufficient information supporting a conclusion that the activities are permissible in the State.

(b) You must file the notice with the appropriate OTS Regional Office at the address in § 516.40(a) of this chapter.

[67 FR 76299, Dec. 12, 2002]

12 CFR Ch. V (1–1–11 Edition)

Subpart B—Exercising Fiduciary Powers

§ 550.130 How may I conduct multi-state operations?

(a) *Conducting fiduciary activities in more than one State.* You may conduct fiduciary activities in any State, subject to the application and notice requirements in subpart A of this part.

(b) *Serving customers in more than one State.* When you conduct fiduciary activities in a State:

(1) You may market your fiduciary services to, and act as a fiduciary for, customers located in any State, may act as a fiduciary for relationships that include property located in other States, and may act as a testamentary trustee for a testator located in other States.

(2) You may establish or utilize an office in any State to perform activities that are ancillary to your fiduciary business.

[67 FR 76299, Dec. 12, 2002]

§ 550.135 How do I determine which State's laws apply to my operations?

(a) The State laws that apply to you by virtue of 12 U.S.C. 1464(n) are the laws of the States in which you conduct fiduciary activities. For each individual State, you may conduct fiduciary activities in the capacity of trustee, executor, administrator, guardian, or in any other fiduciary capacity the State permits for its State banks, trust companies, or other corporations that compete with Federal savings associations in the State.

(b) For each fiduciary relationship, the State referred to in 12 U.S.C. 1464(n) is the State in which you conduct fiduciary activities for that relationship.

[67 FR 76299, Dec. 12, 2002]

§ 550.136 To what extent do State laws apply to my fiduciary operations?

(a) *Occupation of field.* To enhance safety and soundness and to enable Federal savings associations to conduct their fiduciary activities in accordance with the best practices of thrift institutions in the United States (by efficiently delivering fiduciary

services to the public free from undue regulatory duplication and burden), OTS occupies the field of the regulation of the fiduciary activities of Federal savings associations. In so doing, OTS intends to give Federal savings associations maximum flexibility to exercise their fiduciary powers in accordance with a uniform scheme of Federal regulation. Accordingly, Federal savings associations may exercise fiduciary powers as authorized under Federal law, including this part, without regard to State laws that purport to regulate or otherwise affect their fiduciary activities, except to the extent provided in 12 U.S.C. 1464(n) (State laws regarding scope of fiduciary powers, access to examination reports regarding trust activities, deposits of securities, oaths and affidavits, and capital) or in paragraph (c) of this section. For purposes of this section, "State law" includes any State statute, regulation, ruling, order, or judicial decision.

(b) *Illustrative examples.* Examples of State laws that are preempted by the HOLA and this section include those regarding:

- (1) Registration and licensing;
- (2) Recordkeeping;
- (3) Advertising and marketing;
- (4) The ability of a federal savings association conducting fiduciary activities to maintain an action or proceeding in State court; and
- (5) Fiduciary-related fees.

(c) *State laws that are not preempted.* State laws of the following types are not preempted to the extent that they only incidentally affect the fiduciary operations of Federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

- (1) Contract and commercial law;
- (2) Real property law;
- (3) Tort law;
- (4) Criminal law;
- (5) Probate law; and
- (6) Any other law that OTS, upon review, finds:
 - (i) Furthers a vital State interest; and
 - (ii) Either has only an incidental effect on fiduciary operations or is not

otherwise contrary to the purposes expressed in paragraph (a) of this section.

[67 FR 76299, Dec. 12, 2002, as amended at 68 FR 53026, Sept. 9, 2003]

§ 550.140 Must I adopt and follow written policies and procedures in exercising fiduciary powers?

You must adopt and follow written policies and procedures adequate to maintain your fiduciary activities in compliance with applicable law. Among other relevant matters, the policies and procedures should address, where appropriate, the following areas:

- (a) Your brokerage placement practices.
- (b) Your methods for ensuring that your fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security.
- (c) Your methods for preventing self-dealing and conflicts of interest.
- (d) Your selection and retention of legal counsel who is ready and available to advise you and your fiduciary officers and employees on fiduciary matters.
- (e) Your investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution.

FIDUCIARY PERSONNEL AND FACILITIES

§ 550.150 Who is responsible for the exercise of fiduciary powers?

The exercise of your fiduciary powers must be managed by or under the direction of your board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee of directors, officers, or employees.

§ 550.160 What personnel and facilities may I use to perform fiduciary services?

You may use your qualified personnel and facilities or an affiliate's qualified personnel and facilities to perform services related to the exercise of fiduciary powers.